"Step-by-Step Elevating IRS Issues" No Matter Where You Are in the Representation Process

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The "Elevation" Process

<u>Elevation – Plain Language (Definition)</u>:

- * Elevation of a tax matter is described as a process where the "IRS Supervisor, Group Manager or the appropriate Successive Manager":
 - Listens to, collaborates with and/or negotiates with the Taxpayer or the taxpayer's Representative
 - Listens to and collaborates with the IRS Agent, IRS Officer or IRS Representative, and who;
 - Attempts to resolve any discrepancies with respect to the interpretation of tax law and/or established procedures

Reference 1: Bentsion & Naomi Cohen v. U. S. 12 CIV 5828 (2nd Circuit)

Elevation – Other Definitions:

* Elevate:

To raise in rank or status

* Collaborate:

- To work together in a joint intellectual effort
- To cooperate treasonably, as with an enemy occupation force in one's country

* Negotiate:

- Enter into a dialogue to reach a desired outcome
- * An interaction to achieve an agreement of a mutual matter

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The "Elevation" Process

Elevation of a Tax Case Matter:

- * Prior to formally elevating a case matter or requesting a "managerial conference (or referral)" the practitioner should first understand the HWWW procedural process as follows:
 - How to properly elevate a tax matter
 - Why a tax matter should be elevated
 - When to elevate a tax matter, and
 - Where to properly elevate the tax matter
 - * Discussion & demonstration of HWWW noted later in presentation.

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The "Elevation" Process

Elevation of a Tax Case Matter:

- ❖ <u>How</u> Submit an issue elevation request to the case agent or IRS personnel verbally or in writing to include appropriate explanations, documentation and substantiation
- ❖ Why The case Agent or IRS personnel has either been unresponsive, is taking an incorrect and/or irrelevant position and/or is presenting a position that is <u>arbitrary</u>, <u>capricious or that has no sound basis in law</u> (or established administrative procedure.)

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The "Elevation" Process

Elevation of a Tax Case Matter:

- ❖ When When you (the Practitioner) have made a determination or observation that the tax matter or issue is at an em passe, the IRS personnel have informed you that their position is not subject to further discussion, or the IRS is non-responsive
- ❖ Where To the IRS personnel's immediate Supervisor or Group Manager <u>prior to</u> elevating the tax issue to IRS Senior or Executive Management (Territory Managers and/or Area Directors)

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LB0 The action has been described by the Courts as the standard for "abuse of discretion" LG Brooks, 2022-10-03T22:41:40.848

Elevation – Prerequisites:

- ❖ Prior to elevation of the case matter:
 - * The practitioner should ensure that they have provided relevant documentation, information & substantiation; and that they have complied with all "proper & lawful requests" made by the IRS

Reference 2: Circular 230 §10

- * *Elevation Commentary*:
 - In essence, the Practitioner should ensure that the case or tax matter has been "fully developed" prior to elevating

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Elevation & "The Taxpayer Bill of Rights" (TBOR):

- **❖** *TBOR*:
 - * Although the TBOR was "<u>adopted</u>" by the IRS effective June 2014, Congress proceeded a significant step further by "<u>Codifying</u>" the TBOR effective December 18, 2015, via implementation of IRC §7803, "<u>Execution of Duties in Accord with Taxpayer Rights</u>".

Reference 3: IRC §7803(a)(3)

- Publication 1, "Your Rights as a Taxpayer" (Pub 1):
 - Pub 1 provides a <u>detailed explanation of the law</u> with respect to "<u>elevating a case</u>" by including the "The Right to Quality Service" provision

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Elevation & "The Taxpayer Bill of Rights" (TBOR):

- * TBOR "The Right to Quality Service":
 - * Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear & easily understandable communications from the IRS, and to speak to a supervisor about inadequate service. Reference 4: Pub 1, TP Right #2
- * Author's Commentary: "The Right to Quality Service":
 - * The "right" to speak to a supervisor (manager) applies to <u>all levels of the IRS</u> (Audit, Collections, Appeals, etc.).

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The "Elevation" Process

Elevation Preliminary Procedure:

- * Requesting Managerial/Supervisory Info:
 - * Due to the potential reluctance of IRS personnel providing the name & contact numbers of GMs, it is highly recommended that practitioners secure the contact information of the GM or Supervisor **prior to the initiation of any case matter** and/or during the interview phase of a tax case issue.
- **❖** EXAMPLE:
 - * The RO or RA ask if you have any questions prior to proceeding with the execution of the case.

Elevation of a "IRS Collection Division" Matter:

- * Revenue Officer (RO) and/or ACS Controlled:
 - Disagreements and/or misunderstandings should be elevated to the RO's (or ACS) Group Manager (GM) subsequent to "fully developing" the TP's tax matter.
 - * However, if the IRS employee is otherwise preventing the representative from fully developing the case or not following established law or administrative procedures (IRM), the representative should elevate the case/tax matter to the GM immediately. In essence, the case STOPS.

See: Elevation "Case Example A"

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Elevation of a "IRS Collection Division" Matter:

- * Elevation Avenues:
 - 1) Managerial Conference/Managerial Referral.
 - 2) Collection Appeal Program (CAP Appeal)
 - 3) Collection Due Process (CDP) Hearing Request
 - 4) Equivalent Hearing (EH) Request
 - 5) Fast Track Mediation (FTM) Request, or ultimately
 - 6) File a Formal Appeal to the collection action

Elevation of an "Examination/Audit" Matter:

- ❖ Revenue Agent (RA) or Tax Compliance Officer (TCO):
 - * Disagreements and/or misunderstandings should be elevated to the RA's or TCO's Group Manager (GM) subsequent to "fully developing" the TP's tax matter.
 - * However, if the RA or TCO is preventing full development of the case or is demonstrating "<u>abuse of discretion</u>" techniques, the representative should elevate the case/tax matter to the GM <u>immediately</u>. Again, in essence, the case STOPS. However, this action may provoke the IRS to issue a SNOD or possibly a Summons. Be prepared. See: Elevation "<u>Case Example B</u>"

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The "Elevation" Process

Elevation of an "Examination/Audit" Matter:

- * Elevation Avenues:
 - 1) Managerial Conference/Managerial Referral.
 - 1) <u>Fast Track Settlement (FTS) Request</u>
 - **❖** IRM §8.26.2
 - 2) File a Formal Appeal to the proposed assessment action

Elevation of an "Appeals Function" Matter:

- Appeals Officer (AO) or Settlement Officer (SO):
 - * Disagreements and/or misunderstandings should be elevated to the AO's or SO's "Appeals Team Manager" (ATM) subsequent to providing all arguments & defenses relevant to your case/tax matter.
 - * If it appears that the AO or SO is either disregarding established legal precedent or they are demonstrating "<u>abuse of discretion</u>" techniques, the case should be elevated to the ATM <u>immediately</u>. The ATM should provide an "unbiased" response based upon apparent or perceived "hazards of litigation". See: Elevation "<u>Case Example C</u>"

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The "Elevation" Process

Elevation of an "Appeals Function" Matter:

- * *Elevation Avenues*:
 - 1) Managerial Conference/Managerial Referral.
 - 2) Post Appeals Mediation (PAM)
 - IRM §8.26.5 (Non-Collection Cases)
 - IRM §8.26.9 (Collection Related Cases)
 - 3) Retained Jurisdiction Hearing (RJH) Request
 - IRM §5.19.8.4.15
 - * RJH allows TPs to "re-approach" Appeals subsequent to a previous ruling in Appeals

Territory Manager & Area Director Elevations:

- * Elevation Avenues:
 - 1) A "*Territory Manager*" should only be contacted if:
 - A. The GM Conference was not productive, or
 - B. The GM conference was not granted or did not otherwise occur
 - 2) An "Area Director" should only be contacted if:
 - A. The Territory Manager Conference was not productive, or
 - B. The Territory Manager conference was not granted or did not otherwise occur.

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Elevation of a Post Territory Mgr or Area Director Matter:

* *Elevation Avenues*:

During the course of the presentation or representation of a tax matter which continues to be under the jurisdiction of an Area Director, a taxpayer may request referral of an issue to the *IRS National Office*. This matter is usually achieved via the submission of a "*Technical Advice*" request.

If IRS National Office accepts the case for consideration, a "<u>Technical Advice</u> <u>Memorandum</u>" (TAM) is usually issued to formalize the determinations of National Office's review.

Elevation of a "Docketed Case" Tax Matter:

- ❖ IRS Chief Counsel (CC) Attorney:
 - * Discussions, collaborations or negotiations conducted by "Non-Attorney" or "Non-U. S. Tax Court Practitioners" with an IRS Attorney or IRS Counsel, are allowed, however with the understanding that you are now "assisting" the client/taxpayer with the resolution of their tax matter in a pending litigation matter. With the taxpayer's consent, the non-attorney practitioner is allowed to continue deliberations with IRS-CC prior to the initiation of an actual trial proceeding.
 - See: Elevation "Case Example D"

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Elevation of a "Docketed Case" Tax Matter:

- * Elevation Avenues:
 - 1) Accompany & assist the Taxpayer in a "Pre-Trial Conference" that would be conducted with:
 - A. The Taxpayer
 - B. IRS CC Attorney, and
 - C. The U. S. Tax Court Judge
 - 2) Post Pre-Trial Actions
 - * Continue to accompany & assist the taxpayer with the presentation of their case as a "<u>Friend of the Court</u>" (where you are allowed to assist a Pro-se taxpayer with the presentation of their case ... however not represent the taxpayer).

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Other Potential Tax Case Elevation Considerations:

- Elevation Avenues:
 - 1) "Taxpayer Advocate Service" (TAS)
 - A. When the "IRS's System" appears to be dysfunctional
 - B. When significant "delays" in responses are occurring
 - 2) "Congressional Referral"
 - A. This procedure should be invoked when the representative has significantly complied & cooperated with established IRS procedures & requests, yet the case or tax matter continues to be neglected or diminish in expected progress
 - 3) "TIGTA Referral"
 - A. This type elevation should only occur when the representative suspects a violation of Section 1203 of RRA' 98 has occurred.

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The "Elevation" Process

Other Potential Tax Case Elevation Considerations:

- Elevation Avenues:
 - 4) FOIA Request
 - A. Although not deemed an actual elevation, the submission of a FOIA has the effect of temporarily terminating an open case matter, which garners the attention of IRS Line Managers
 - 5) Audit Reconsideration
 - A. Additionally, not actually deemed as a "true" elevation, however, this procedure actually "transfers the status" of the tax matter for re-determination which has the effect & feel of an elevation
 - 6) Offer-in-Compromise
 - A. Also not deemed as a "true" elevation, but again, actually "transfers the status" of the tax matter for re-determination which also has the effect & feel of a type of elevation procedure

"Case Example A" – IRS Collection Matter:

- ❖ The taxpayer's representative has adequately responded to a Revenue Officer's (RO) Form 9297 in a timely manner. The RO has acknowledged receipt of the documentation & has agreed to provide a response to your resolution proposal within 5 business days. You have left several voice mail messages & ten (10) business have expired with no response from the RO.
- ❖ **Proposed Action (1)**: Allow the RO additional time, or
- * Proposed Action (2): Elevate the case to the GM

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The "Elevation" Process

"Case Example B" – Exam or Audit Matter:

- Subsequent to the submission of your POA related to a corporate tax audit (which was remitted to the CAF Unit & directly to the RA) the RA contacts your client without your authorization.
- **Proposed Action (1)**: Elevate the case to the GM, or
- Proposed Action (2): Elevate the case to TIGTA

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"Case Example C" – Appeals Function Matter:

- * An Appeal Officer responds to your formal appeal discounting your legal arguments & applicable legal cites and further threatens to reverse any previously allowed "adjustments" in the event you or the taxpayer refuse to accept the current settlement of issues as proposed by the IRS.
- Proposed Action (1): Accept the AO's determinations
- * Proposed Action (2): Elevate the case to the ATM, or
- Proposed Action (3): Elevate the case to Territory Manager

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The "Elevation" Process

"Case Example D" – Docketed Case Matter:

- * A pro-se taxpayer has a "pre-trial" conference scheduled with a sitting Judge of the U. S. Tax Court. The taxpayer requests your assistance related to the pre-trial conference; however, you are not an Attorney or a USTCP.
- Proposed Action (1): Inform the TP that you are prohibited from assisting them with this type tax matter
- * <u>Proposed Action (2)</u>: Contact the Clerk of the Court (with the TP's presence) & inform the Court of your intentions to assist the TP during the pre-trial conference phase of the proceedings

"Additional Elevation Issues":

- * <u>IRM §4.2.5.2-(5)</u>, "<u>Investigative Disclosure</u>"-Examiners must obtain <u>managerial</u> approval before conducting a search on-line via a public internet search engine (e.g., Google, Yahoo, Bing, etc.). Entering a <u>TP's name, address, or other information</u> <u>obtained from IRS records</u> on an internet site constitutes a disclosure of return information.
- * IRM §4.19.19.2.3.1-(2), "Communicating Taxpayer's Rights When They Disagree With the Examiner's Determination"-If the TP requests an informal call with the Manager, the TP should expect a call from the Manager within 5 business days. (Live calls not allowed for referral).

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The "Elevation" Process

"Additional Elevation Issues":

- * <u>IRM §5.19.8.4.16.4-(2)</u>, "<u>How Does the Taxpayer Appeal an IRS Action</u>" The Manager should speak with the Taxpayer <u>immediately</u> or <u>return the call within 24 hours</u>.
- * <u>IRM §5.19.4.5.3.3-(1)(e)</u>, "Appeal Rights for NFTL's" If a decision is made to continue with the NFTL, <u>arrange for the TP to speak a Manager</u> as the first step in the Appeal process.
- * <u>IRM §5.1.10.9-(1) & (2)</u>, "<u>Timely Follow-Ups</u>":
 - (1) The deadline given a taxpayer or representative to comply with a request for information or action **should be reasonable** with respect to the information or action requested, and
 - * (2) When a taxpayer or representative misses a specific deadline, <u>initiate follow-up action within fifteen (15) calendar days</u> unless special circumstances warrant delay.

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"Additional Elevation Issues":

- □ <u>IRM §5.19.1.3.1-(1)</u>, "<u>Referrals to Manager-All Employees</u>" Taxpayer requests to speak to a manager are a priority customer service issue. If a caller requests to speak to a manager, there are two options:
- The taxpayer must be allowed to **speak to the manager immediately**, or
- The manager must make a timely callback to the taxpayer within 24 hours (one business day).
- □ <u>IRM §5.19.1.3.1-(2)</u>, "*Referrals to Manager-All Employees*" If the manager can take the call immediately,
- A. Advise the caller you will attempt to refer him or her to your manager. Ask the caller to please hold.

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